IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.1945 OF 2005

Virchand Narshi Soni ...Petitioner
vs.
The State of Maharashtra ...Respondent

Mr.S.S.Kulkarni for the Petitioner
Ms M.M.Deshmukh,A.P.P. for State

CORAM: A.S.OKA,J.
DATE : SEPTEMBER 8,2005

P.C.:

1. Rule. Learned A.P.P. waives service. Considering the facts and circumstances of the case, taken up for hearing forthwith.

2. The challenge in this Petition is to the order dated 8th June 2005 passed by the learned Judicial Magistrate (F.C.), Vashi and confirmation thereof by the Sessions Court by order dated 12th July 2005 in Revision Application filed by the Petitioner.

3. The Petitioner claims to be the sole proprietor of proprietary concern M/s.Narshi Nanshi and Sons. On behalf of the Petitioner his alleged Power of Attorney holder one Tarun Vidhyadhar Mishra filed an application before the learned Magistrate for return of a tanker standing in the name of M/s.Narshi Nanshi and Sons. The said tanker was seized by the Nerul Police Station in connection with C.R.No.130 of 2005. A

reply was filed to the said application on 30th June 2005 by the learned Prosecutor stating that interim custody may be given to the Petitioner on indemnity bond. A separate reply was filed by the Investigating Officer in which it is stated that tanker is owned by the Petitioner and the papers of the tanker stand in the name of M/s.Narshi Nanshi and Sons. It is stated that the Petitioner is not co-operating for investigation and therefore there is objection for delivering the tanker to the Petitioner.

4. The learned Magistrate recorded that the Assistant Public Prosecutor has no objection for release of the tanker but the Investigating Officer has strong objection on the ground that the owner of the tanker was not cooperating for the investigation. On the basis of the said objection the learned Magistrate rejected the application. In a Revision Application filed by the Petitioner for challenging the said order, the Sessions Court held that the Revision Application was not maintainable and remedy to the Petitioner was to approach this Court.

5. Shri Kulkarni for the Petitioner states that the Petitioner is ready and willing to appear before the Investigating Officer for the purposes of recording his statement and subject to appearance of the Petitioner, the tanker be ordered to be returned to the Petitioner. The

learned A.P.P. submitted that the Investigating Officer objected only on the ground that the Petitioner did not appear in the Police Station though he is a witness and therefore his statement could not be recorded.

6. I have considered the submissions. There does not appear to be any dispute that the tanker stands in the name of M/s.Narshi Nanshi and Sons of which the Petitioner is the sole proprietor. The said fact is not disputed even in the report submitted by the Investigating Officer before the Trial Court.

7. The Petitioner has offered to attend the concerned police station for recording his statement. In view of this statement, Petitioner is entitled to the relief of return of property.

8. Hence, I pass the following Order :

i) The Petitioner is directed to attend the Nerul Police Station and meet the concerned Investigating Officer on any day in the week commencing from 19th September 2005 for the purposes of recording his statement.

ii) Impugned order dated 8th July 2005 passed by the learned Judicial Magistrate (F.C.), Vashi is quashed and set aside.

iii) After the Petitioner attends the concerned Police Station and his statement is recorded, the tanker bearing registration No.MH-04-CG-2215 shall be returned to the Petitioner subject to the Petitioner filing an indemnity bond before the learned Magistrate and an undertaking to preserve the tanker in proper condition and to produce it before the learned Magistrate as and when called upon to do so.

iv) Rule is made partly absolute in above terms.

. Parties to act upon an authenticated copy of this order.

JUDGE